

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#7

Application No. : 09/591,761  
Confirmation No. :  
Applicant : Takahisa Ueda et al.  
Filed : June 13, 2000  
Title : Gland packing  
TC/A.U. :  
Examiner :  
Docket No. : UEDA3004/FJD  
Customer No. : 23364

**RENEWED PETITION TO REVIVE UNDER 37 CFR § 1.137(b)**

**MAIL STOP PETITION**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA. 22202-3514

**RECEIVED**

JUL 02 2008

**OFFICE OF PETITIONS**

Sir:

The Commissioner is hereby requested to reconsider the decision dated March 26, 2008 to dismiss the original Petition, and further in consideration of the following:

As to Period (1)

In reply to the requirement for explaining "period (1), i.e., " ... the delay in reply that originally resulted in the abandonment", 37 CFR 1.137(b), requested by the Petitions Examiner, the facts were set forth in the initial Petition to Revive. In that document it was noted that the matter, a Response to the Notice to File Missing Parts dated August 14, 2000, was not docketed in the docketing system of Bacon & Thomas, PLLC, when the undersigned joined the firm of Bacon & Thomas, PLLC, and that there is no way to check on why this was not done because the docket clerk at the time for Bacon & Thomas, PLLC is deceased. Well over 200 cases were brought with the undersigned to the firm of Bacon & Thomas, PLLC, and to the knowledge of the undersigned all but the present case were properly docketed.

In the Petitions Examiner's commentary it has been noted that "where, as here, there is a question whether the initial delay was unintentional, the petitioner must meet the burden of establishing that the delay was unintentional within the meaning of 35 U.S.C. §41(a)(7) and 37 CFR 1.137(b)," citing *In re Application of G*, 11 USPQ2d 1378. The noted case has no bearing on the present situation. In that case, the Board stated : "The record clearly establishes that the applicants **deliberately** allowed this application to become abandoned. A deliberate act is not rendered 'unintentional' when an applicant....reviews the same facts (e.g., patentability of the claims) a second time which changes their minds as to the appropriate course of action to pursue." (emphasis added). The facts in the noted case show "premeditation," which clearly does not exist here. The genesis of the abandonment here had nothing to do with premeditation, but everything to do with the failure to docket a response into the undersigned's new firm. The two situations cannot be equated in any way.

As noted in the original Petition to Revive, a Response to the Notice to File Missing Parts **was** prepared by the undersigned on August 16, 2000 while with his previous firm of Jones, Tullar & Cooper, P.C. Included with this preparation was a check #15046 for the fee that was due of \$820. The receipt card that was prepared, however, does not bear a date stamp. Before filing the original Petition to Revive, the undersigned contacted the bookkeeper at Jones, Tullar & Cooper, P.C., Mrs Deborah Mustone, and asked her to check the records of Jones, Tullar & Cooper, P.C. to determine whether check # 15046 had been cashed. She reported that it was not, which further suggests that the Response, while prepared was not filed. Nevertheless, the undersigned thought that it was filed. Unfortunately, the undersigned cannot state with any certainty why the Response was not filed, although clearly it was prepared.

The second error occurred when the undersigned joined Bacon & Thomas, PLLC, in that the case was not docketed into the docketing system.

But even if it had been docketed it could not have prevented the abandonment. The only benefit it would have had is that the Petition to Revive would have been filed sooner.

As to others involved in the facts related in the originally filed Petition to Revive, as noted the docket clerk at Bacon & Thomas, PLLC at that time that this case was to be docketed into the docketing system here at Bacon & Thomas, PLLC is deceased, and the bookkeeper at Jones, Tullar & Cooper, P.C. is no longer employed there, and in any event had nothing to do with docketing the case.

It is clear that the abandonment was ***never intended***, and as such meets the requirements of 37 CFR 1.137(b).

#### As to Period (2)

The following statement made by the Petitions Examiner, that "...where the applicant deliberately chooses not to seek or persist in seeking the revival of an abandoned application, or where the applicant deliberately chooses to delay seeking the revival of an abandoned application, the resulting delay is seeking revival of the abandoned application cannot be considered as 'unintentional' within the meaning of 37 CFR 1.137(b)," is not understood in light of the facts set forth in the originally filed Petition to Revive. In other words, what facts recited in the originally filed Petition to Revive, could possibly lead one to even suspect that the delay in petitioning for revival was "deliberate?"

Since the case was not docketed into the docketing system here at Bacon & Thomas, PLLC., since no IFW of the case exists, and since a notice of abandonment was never received by the undersigned from the USPTO, the undersigned did not become aware of the abandonment until the inventory check conducted by the undersigned in February, 2007, as noted in the originally filed Petition to Revive. The undersigned attempts to conduct an


inventory check on an annual basis, but why this error was not noted in an earlier year is not known.

What the undersigned is certain of is that the abandonment was detected in February, 2007 and a petition to Revive filed on July 20, 2007. There never was any deliberate attempt on the part of the undersigned to cause this case to become abandoned, and none from applicant or applicant's assignee.

If any fee, other than the extension fee which is being submitted herewith, is required with this submission, it should be charged to Dep. Acc. No. 02-0200.

Date: June 26, 2008

Respectfully submitted,  
BACON & THOMAS, PLLC



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